

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 18-10-1996.

SPECIAL CIVIL APPLICATION No. 4817 OF 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KADIVAR S MAMAD & OTHERS

Versus

DISTRICT DEVELOPMENT OFFICER, RAJKOT & ANOTHER.

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Appearance:

MR SURESH M SHAH Advocate for the Petitioners.

Ms. Parmar, A.G.P. for the Respondents.

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/10/96

ORAL JUDGEMENT

The order dated 18th September 1984, passed by the Secretary, Revenue (Appeal), confirming the order of the District Development Officer-Rajkot, and refusing to review the same, is under challenge in this petition.

2. The facts giving rise to the present petition may in brief be stated. The Government adopted a policy to provide plots to the poor and downtrodden so that they

can construct their residential houses and have a shelter. With a view to help that persons in furtherance of that policy, 61 plots situated within the local limits of Village Valasan were to be put to public auction by the Taluka Development Officer of Wankaner. The work of auction was assigned to a competent officer in the Office of the Taluka Development Officer. After undergoing necessary formalities the auction was fixed on 28th February 1974. At last 59 plots were put to auction on that day. The petitioners and other village people took part in the auction. The petitioners bade highest and therefore their bids were accepted subject to the approval of the T.D.O. On 15th May 1974 the TDO passed the order No. \_\_\_\_\_ 817 and disapproved the auction qua 17 plots. On the same day he passed another order No. \_\_\_\_\_ 818 for 31 plots and upheld the auction. The petitioners were the auction purchasers of these 31 plots and their highest bid came to be accepted. Thereafter on 22nd May 1974 the TDO passed the order No. \_\_\_\_\_ 854 qua the remaining 11 plots and disapproved the action thereof. Those who could not succeed before the TDO in getting their bids approved filed the appeal before the District Development Officer. The DDO also suo motu took the matter in revision qua 31 plots the auction of which was approved by the TDO. The DDO on 19th September 1975 set aside the order of the TDO confirming the auction qua 31 plots purchased by the petitioners, and confirmed the order of the TDO who had vide his order dated 15th May 1974 and 22nd May 1974 disapproved the auction. Thereafter the auction purchasers affected inclusive of the petitioners preferred revision applications before the State. Other than the petitioners preferred Revision Application No. 1 of 1976, while the petitioners preferred Revision Application No. 605 of 1984. Mr.T.V. Krishnamurthy, the then Deputy Secretary (Appeal) heard the Revision Application No. 1 of 1976. He allowed the same and confirmed the sale qua plots Nos. 14 to 21, 23, 25 to 27, 30 to 34 and 46 to 50 and also plot No. 63. Mr. Krishna Sagar, Secretary, Revenue (Appeal) on 18th September 1984 passed the order in Revision Application No. 605 of 1984, preferred by the petitioners and others, refusing to review the order passed by the DDO. As two revision applications were decided by different officers, contrary orders with regard to the same auction came to be passed. Some of the auction purchasers succeeded while the petitioners and others failed before the Revenue Secretary. The petitioners have therefore challenged the legality and propriety of the order passed by the Revenue Secretary on 18th September 1984.

3. It has been contended on behalf of the

petitioners that the authority deciding about the validity of the auction ought not to have grotesquely passed the contrary order, but ought to have passed the congruous order especially when the auction for all the plots was one and the same, and on the same day and place. The orders running counter to the other would go to show that there was no application of mind. When qua for some plots auction is upheld on the ground of equality their bidding ought to have been accepted. Against such submission, the learned A.G.P. contends that the rule of equity is not to be applied loosely or irrationally. Of course in this case it is not so; but if by mistake act is done not consistent with law or rules, no one can claim likewise act done in his favour on the ground of equality.

4. It seems the learned A.G.P. has been impelled to contend keeping the decision of the Apex Court rendered in the case of Gurucharan Singh vs. New Delhi Municipal Committee - (1996) 2 S.C.C. 459 in mind, wherein it is laid down that the benefits extended to others passing order in irregular or illegal manner cannot be claimed in one's own favour on the ground of equality amounting to giving direction for the continuation of the same irregularity or illegality by the State or authority. As per that decision, one can challenge the validity of the order passed in an irregular or illegal manner and seek appropriate correction or modification or order setting aside the same, but cannot claim the benefits extended to others passing the order in illegal or irregular manner, on the ground of equality. If the claim is to be based on equality, it should be shown that though the claim is just and legal, but the same is unjustly denied to him, while the same has been extended to others. What is therefore to be examined is whether in this case passing the impugned order the just and legal claim is unjustly denied, or the impugned order being invalid, the case is required to be considered afresh.

5. It may be at this stage stated how the orders running counter to the other one came to be passed. The DDO while setting aside the auction found that as per rule the auction was not carried out, upset price was not fixed, the auction proceeds were not adequate, and competitive feature thereof was totally ignored. There was also no proper and effective publication about the auction. The then Secretary hearing the Revision Application No. 1 of 1976 did not agree with the points on which the DDO set aside the auction, and found that all those points were not correctly appreciated looking to the materials on record. According to him as per

rules the auction was carried out, the upset price was fixed at Re.1.05 ps. per sq.meter, while during the auction the panchayat could get the amount at the rate ranging from Rs.1.50 ps. to Rs.5.00 per sq.mtr. When upset price was fixed and the panchayat could get more than the sum even in some plots a bit more than reasonable, it could not be said that rules governing the auction were violated, competitive feature thereof was not maintained and the sale proceeds were far below the reasonable. While another officer hearing the revision application filed by the present petitioners and others found contrary than what the other Secretary found. According to him the upset price was not fixed, by beating the drums publication was not made, competitive feature was not maintained, and notification about the auction was not properly published. He also found that clear period of 30 days after the publication of the notification and the date of auction was not maintained. He therefore found that the auction carried out being inconsistent with the provisions of the rules, it was required to be quashed. He therefore accordingly passed the order refusing to review the order passed by the DDO.

6. It would thus appear that on certain points different authorities differed. It may be because from different angles both appreciated the evidence on record, or there may be misreading of the evidence or misconstruction thereof. The possibility of overlooking some material cannot be ruled out. The conjectures, assumptions or inferences might have played steering role. Hence the conclusions drawn by either of them may be the result of non-application of mind and so one authority on particular point may be right and on another point may not be. The authority not right on certain point, if erroneously holds the auction valid or invalid, those who are failing cannot take advantage on the ground of equality. They have to show that the auction carried out was quite in consonance with the laws governing the auction.

7. The learned A.G.P. made unproductive efforts to show that in the case on hand everything was done quite on consonance with law/rules governing the auction and in fact there was neither non-application of mind nor mis-reading or overlooking the facts on record. Reading the impugned orders running counter to the other one shows that either of the authorities may be right or partly right, or erroneous in toto. The authority whose order is challenged was right or wrong in adjudicating is to be ascertained. I am aware about my duty, to set the dispute at rest finally rectifying the errors noted

rather than feeling satisfied by pointing out the errors in the order challenged. To adjudicate the matter finally, above referred and several other questions of facts are required to be examined and so the evidence on record is required to be dissected. In the exercise of writ jurisdiction, this Court will not enter into the factual aspect of the case. The proper course therefore open to me is to refer the matter back for reconsideration and appropriate order.

8. For the foregoing reasons, the petition is allowed. The order passed by the Secretary on 18th September 1984 in Revision Application No. 605 of 1984 is hereby quashed and set aside, and the matter is remanded to the Secretary, (Revenue) for considering afresh in the light of the observation made above. The Secretary shall hear the parties and shall dispose of the revision at his earliest, but not later than 20th January 1997. No order as to costs in the circumstances of the case. Rule is made absolute to the above extent.

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NB:- Please refer original for blanks kept for filling in words in 'Gujarati'.